



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 18, 2003

Mr. James M. Frazier, III  
Assistant General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342

OR2003-5767

Dear Mr. Frazier:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 186195.

The Texas Department of Criminal Justice (the "TDCJ") received a request for information related to use of force investigations. You indicate that you have released the basic information from the investigations, but argue that the remainder of the requested information is excepted from disclosure under sections 552.101, 552.117 and 552.134 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Texas law generally prohibits the public disclosure of the results of polygraph examinations. Occ. Code § 1703.306. However, polygraph results may be disclosed to "the examinee or any other person specifically designated in writing by the examinee." Occ. Code § 1703.306(a)(1). In this case, part of the requested documents consist of information acquired from a polygraph examination of the requestor. As the examinee, the requestor is entitled to release of his own polygraph information. *Id.* The TDCJ must, therefore, disclose the marked polygraph information related to the requestor's own examination under section 1703.306 of the Occupations Code.

Section 552.134 relates to information about inmates of the TDCJ. Section 552.134 provides in relevant part:

(a) Except as provided by Subsection (b) or by Section 552.029, information obtained or maintained by the Texas Department of Criminal Justice is excepted from the requirements of Section 552.021 if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Section 552.029 states:

Notwithstanding . . . Section 552.134, the following information about an inmate who is confined in a facility operated by or under a contract with the Texas Department of Criminal Justice is subject to required disclosure under Section 552.021:

. . . .

(8) basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.

Gov't Code § 552.029(8). Section 552.134 is explicitly made subject to section 552.029. Under section 552.029, basic information regarding the death of an inmate in custody, an alleged crime involving an inmate, and an incident involving the use of force is subject to required disclosure. In this case, the requested documents pertain to an incident involving the use of force against a TDCJ inmate. Accordingly, while TDCJ must generally withhold the submitted information under section 552.134, it must release basic information regarding this incident pursuant to section 552.029(8). Basic information includes the time and place of the incident, names of inmates and TDCJ officials directly involved, a brief narrative of the incident, a brief description of any injuries sustained, the findings of any official investigations into the incident, and information regarding criminal charges or disciplinary actions filed as a result of the incident.

In summary, the TDCJ must release the requestor's polygraph examination information we have marked under section 1703.306 of the Occupations Code. The TDCJ must disclose basic information under section 552.029(g) of the Government Code, but must withhold the remaining information under section 552.134.<sup>1</sup>

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<sup>1</sup> Because we find sections 552.101 and 552.134 dispositive, we decline to address your arguments under section 552.117 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather R. Rutland". The signature is fluid and cursive, with the first name being the most prominent.

Heather R. Rutland  
Assistant Attorney General  
Open Records Division

HRR/sdk

Ref: ID# 186195

Enc: Submitted documents

c: Mr. David Campos  
4730 31<sup>st</sup> Street  
Lubbock, Texas 79410  
(w/o enclosures)